

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JOHN P. CHARTERS, individually and
On behalf of all others similarly situated,

Plaintiff,

V.

JOHN HANCOCK LIFE INSURANCE
COMPANY (U.S.A.),

Defendant.

Civil Action No.
07-11371-NMG

**ORAL ARGUMENT
REQUESTED**

**PLAINTIFF JOHN P. CHARTERS' CROSS-MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiff John P. Charters (“Plaintiff” or “Charters”) hereby cross-moves for partial summary judgment on the issue of whether Defendant John Hancock Life Insurance Company (U.S.A.) (“Defendant” or “Hancock”) is a fiduciary of the Charters, Heck, O’Donnell and Petrulis, P.C. 401(k) Plan (the “Plan”).

As set forth more fully in the attached Memorandum of Law and Plaintiff's Local Rule 56.1 Statement of Material Facts Not In Dispute, the undisputed facts establish that Hancock is a fiduciary of the Plan because (1) benefits under the Annuity Contract between Charters and Hancock were variable, depending on investment performance of assets held by Hancock in separate accounts, and the Plan bore all the investment risk; and (2) because Hancock exercised extensive authority and control over Plan Assets.

WHEREFORE, for these reason and those set forth more fully in the Memorandum of Law, Local Rule 56.1 Statement, and materials filed in support of this Motion, Plaintiff

respectfully requests that the Court grant this motion and enter partial summary judgment in favor of the Plaintiff on the issue of Hancock's fiduciary status.

REQUEST FOR ORAL ARGUMENT

Plaintiff respectfully requests the opportunity to present oral argument on this motion, pursuant to Local Rule 7.1(D).

Dated: June 30, 2008

Respectfully submitted,

/s/ Adam M. Stewart

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CERTIFICATE OF SERVICE

I certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 30, 2008.

/s/ Adam M. Stewart

Adam M. Stewart